IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 4690 of 2007(G)

OS.151/2006 of PRINCIPAL SUB COURT,ALAPPUZHA

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PETITIONERS:

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1. MRS. VALSA KURIAN,
   W/O. LATE DR.GEORGE KURIAN, RESIDING AT
   MUTHOOT HOUSE, KOZHENCHERRY, PATHANAMTHITTA DIST.

2. SRI.GEORGE ALEXANDER,
   S/O. LATE GEORGE KURIAN, MANAGING DIRECTOR,
   MUTHOOT GROUPS, MUTHOOT TOWERS, BANERJI ROAD,KOCHI

BY ADV. SRI.K.P.VIJAYAN
SRI.V.M.SYAM KUMAR
SMT.C.B.SUMA DEVI
SMT.KRIPA ELIZABETH MATHEWS

RESPONDENTS:

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1. SRI.K.Y.SUDHEENDRAN, S/O.K.K.YESODHARAN,
   ADVOCATE, ROOM NO.3, MUNICIPAL REST HOUSE,
   OPP: DISTRICT COURT, ALAPPUZHA, RESIDING AT
   KUNNUTHARAYIL HOUSE, SANATHANAPURAM P.O.,
   ALAPPUZHA.

2. MOTOR ACCIDENTS CLAIMS TRIBUNAL,
   ALAPPUZHA.

BY ADV. SRI.C.E.UNNIKRISHNAN FOR R1
SRI.N.ASHOK KUMAR
SMT.R.REMA
GOVT PLEADER SRI. SHYSON P. MANGESHA FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the award dtd. 10.1.1996 in MVs 955/89,956/89, 1045/1989 and 1046/89 passed by the 2nd respondent.

Ext.P2 true copy of the letter dtd. 15.10.2005 from the 1st respondent to the petitioners.

Ext.P3 true copy of the petition and the affidavit IA Nos. 3001/06 filed before the 2nd respondent.

Ext.P4 true copy of the petition and the affidavit IA No.3002/06 filed before the 2nd respondent.

Ext.P5 true copy of the petition and the affidavit I.A. 3003/06 filed before the 2nd respondent.

Ext.P6 true copy of plaint in OS 151/2006.

Ext.P7 true copy of the attachment petition viz. IA 1539/06 and the affidavit.

Ext.P8 true copy of the exparte attachment order dtd. 2.11.2006.

Ext.P9 true copy of the counter affidavit filed by the petitioners.

Ext.P10 true copy of the order passed by the Sub Court, Alappuzha on 15.11.2006 in IA 1539/06 in OS 151/06

1st respondent's Exts:

Ext.R1(A) Copy of the communication dated 6.9.1996 endorsed by the 2nd petitioner to this deponent.

Ext.R1(B) Copy of the letter dated 28.6.1996 from the 2nd petitioner to this deponent.

Ext.R1(C) copy of the letter dated 18.7.1996 from the 2nd petitioner.

Ext.R1(D) copy of the letter dated 11.9.1996 from this deponent to the petitioner.

Ext.R1(E) copy of the letter dated 20.9.1996 addressed to the 2nd petitioner.

Ext.R1(F) copy of the letter dated 25.9.1996 addressed to the 2nd petitioner.

Ext.R1(G) copy of the certificate dated 15.11.96 issued to the 1st petitioner.

Ext.R1(H) copy of the letter dated 8.1.2002 from the 2nd petitioner.

Ext.R1(I)(a) copy of the letter dated 29.1.2002 from the petitioner.

Ext.R1(I)(b) copy of letter dated 29.3.2004 from office of the 2nd petitioner.

Ext.R1(I)(c) copy of the letter dated 12.6.2004 from the office of the 2nd petitioner.

Ext.R1(I)(d) copy of the letter dated 9.9.2005 from office of the 2nd petitioner.

Ext.R1(I)(j) copy of the letter dated 18.4.2006 from the petitioner to the 1st respondent.

Ext.R1(k) copy of the letter dated 4.5.2006 of reply to Ext.R1((j) from the petitioner to the 1st respondent.

M.N.Krishnan, J.

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W.P(C).No.4690 of 2007

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Dated this the 13th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to quash Exts.P8 and P10 and also for a writ of mandamus to direct the M.A.C.T. to hand over the F.D. receipts. This is an unfortunate case where a lawyer has approached the court for getting his Advocates fee. I am not going into the merits or demerits of the case, but so far this court is concerned, the present subject matter is regarding the order of attachment passed by the court below that is an amount of Rs.33,34,359/- in the hands of the Corporation Bank, Alappuzha and the Andhra Bank, Alappuzha. The amounts mentioned above, are deposited in these Banks as compensation due to the claimants in O.P.(M.V.) No.955 of 1989 of the M.A.C.T., Alappuzha. The defendant in the suit is also said to be an affluent person. When a suit for realisation of money is filed and when there is an attempt to transfer the assets so as to make the decree unexecutable, the court will interfere so as to entitle the plaintiff to enjoy the fruits of the decree. So, Order 38 Rule 5 of Code of Civil Procedure is in the form of a security for the decree which may follow ultimately. The said purpose can be reserved by directing the defendants to furnish valid security for

the amount claimed in the suit.

2. Therefore the orders passed are modified and the defendants in the case are directed to furnish security for an amount of Rs.5 lakhs to the satisfaction of the Subordinate Judge. On furnishing such security, now the present order shall be vacated and attachment be lifted and the Bank be intimated about the factum. I also feel that this is a case where the lawyers appearing, should take special care to settle, so that unnecessary embarrassment to all can be averted. I also direct the learned Subordinate Judge to dispose of the matter as expeditiously as possible within a time frame of six months from today.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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